

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

TONY COFFEE, an individual,  
  
Plaintiff,  
  
v.  
  
MARIOS STOLIDAKIS, an individual;  
DOE individuals I through X; and ROE  
corporations and organization I  
through V, inclusive,  
  
Defendants.

Case No.: 2:21-cv-02003-ART-EJY  
  
ORDER

Before the Court is Defendant<sup>1</sup> Marios Stolidakis's motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and for failure to state a claim under F.R.C.P. 12(b)(6) (ECF No. 7), as well as Plaintiff Tony Coffee's motion for a preliminary injunction (ECF No. 13.)

Based on the record and in consideration of the relevant law, the Court denies Defendant's motion to dismiss for lack of subject matter jurisdiction, grants in part and denies in part Defendant's motion to dismiss for failure to state a claim and denies Plaintiff's motion for a preliminary injunction.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On July 23, 2020, Plaintiff Tony Coffee and Defendant Marios Stolidakis organized and formed Pinnacle Protection Group, LLC ("Pinnacle"), a private security company which provides patrol and event security services. (ECF No. 1 ("Complaint") ¶ 6.) Both Plaintiff and Defendant were listed as a Managing Member of Pinnacle in its company filings with the Secretary of State. (ECF No.

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<sup>1</sup> Plaintiff included "DOE individuals I though X; and ROE corporations and organizations I through V, inclusive," in the caption of his Complaint, but did not reference any such Doe or Roe persons or entities in the Complaint. The Court will use the term "Defendant" to refer only to Marios Stolidakis.

1 10-2.) At least in the beginning, Plaintiff and Defendant agreed that the  
2 membership interest of Pinnacle would be split equally between them. (Complaint  
3 ¶ 7.) Plaintiff applied to the Nevada Private Investigators Licensing Board for a  
4 private patrolman's license on behalf of Pinnacle and was granted a license which  
5 listed Plaintiff as the Qualifying Agent for Pinnacle. (*Id.* ¶ 5; ECF No. 10-1.) Once  
6 Pinnacle was formed, an internet domain name was purchased and email  
7 accounts were set up for Pinnacle, which included, without limitation, the email  
8 addresses "pinnacleprotectiongroupllc@gmail.com" and  
9 "TC@pinnacleprotectiongroup2020.com." (Complaint ¶ 8.) Bank accounts were  
10 also set up for Pinnacle. (*Id.* ¶ 9.)

11 In the summer of 2021, the relationship between Plaintiff and Defendant  
12 began to deteriorate. Plaintiff alleges that shortly after Pinnacle's bank accounts  
13 were set up, Defendant began transferring funds from Pinnacle's bank accounts  
14 to personal accounts. (*Id.* ¶ 10.) Plaintiff further alleges that Defendant attempted  
15 to cut Plaintiff out of Pinnacle's business by contracting with clients and hiring  
16 subcontractors without Plaintiff's knowledge or consent. (*Id.* ¶ 13.) Defendant  
17 allegedly told clients not to contact Plaintiff and defamed Plaintiff by telling  
18 employees and clients that Plaintiff was stealing from the business and that  
19 Plaintiff had been diagnosed with early onset dementia. (*Id.* ¶¶ 14-15.) Defendant  
20 then, in early August 2021, allegedly locked Plaintiff out of Plaintiff's company  
21 email account, read Plaintiff's emails, and shared Plaintiff's emails with third  
22 parties. (*Id.* ¶ 16.)

23 The tension between Plaintiff and Defendant reached a boiling point in  
24 August of 2021, which culminated in Plaintiff ceasing his involvement with the  
25 company. Plaintiff alleges that in late August 2021, Defendant withdrew all the  
26 company funds in the Pinnacle bank accounts, opened a new bank account for  
27 Pinnacle at a different banking institution, and directed all subsequent client  
28 payments to Pinnacle to the new bank accounts. (*Id.* ¶ 17). Defendant then

1 allegedly told Plaintiff that he would not return any funds to Pinnacle for  
2 continued operations unless Plaintiff relinquished his membership interest in  
3 Pinnacle to Defendant and allowed Defendant to continue to operate Pinnacle  
4 using the private patrolman's license which Plaintiff had obtained and which was  
5 in Plaintiff's name, and which is necessary to legally engage in the enterprise of  
6 private patrol under Nevada law. (*Id.* ¶ 18.) When Plaintiff refused, Defendant  
7 filed an Amended List of Officers for Pinnacle with the Secretary of State which  
8 removed Plaintiff as a Managing Member and listed an individual named Leor  
9 Rosen as a Managing Member alongside Defendant. (*Id.* ¶ 19.) On or around  
10 October 2021, Defendant allegedly used Plaintiff's signature on Pinnacle's payroll  
11 checks to its employees without Plaintiff's permission. (*Id.* ¶ 20.) Defendant  
12 denies the allegations and claims that Plaintiff's ownership in Pinnacle was  
13 "diluted" due to his failure to make capital contributions to the company and his  
14 abandonment of his interest in the company. (ECF No. 7 at 3:18-21.)

15 Plaintiff's Complaint contains nine claims for relief: (1) conversion; (2)  
16 declaratory relief under NRS 30.040; (3) fraudulent misrepresentation; (4)  
17 defamation per se; (5) intentional interference with prospective economic  
18 advantage; (6) violation of NRS 205.477; (7) violation of the Stored  
19 Communications Act, 18 U.S.C § 2701; (8) unjust enrichment; and (9) injunctive  
20 relief. Plaintiff also pled a claim for injunctive relief and seeks a preliminary  
21 injunction to enjoin Defendant from: (1) personally possessing or otherwise  
22 diverting funds belonging to Pinnacle to outside accounts; (2) making false and  
23 defamatory statements about Plaintiff to third parties; (3) logging into and  
24 otherwise accessing Plaintiff's email account(s); and (4) forging Plaintiff's  
25 signature in any manner. (ECF No. 13.)

26 Defendant moved to dismiss for lack of subject matter jurisdiction and for  
27 failure to state a claim. In addition, the parties dispute whether the submission  
28 of certain exhibits and declarations converts the Rule 12(b)(6) motion to dismiss

1 into a motion for summary judgment, as well as whether Plaintiff may properly  
2 submit an amended response to Defendant's motion to dismiss.

## 3 **II. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER** 4 **JURISDICTION**

5 Plaintiff's sole federal claim is that Defendant violated the Stored  
6 Communications Act, 18 U.S.C. § 2701 *et seq.* Because this Court has  
7 jurisdiction over this claim, it rejects Defendant's motion to dismiss this action  
8 under Fed R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.<sup>2</sup>

9 Federal courts are courts of limited jurisdiction. *See Owen Equip. &*  
10 *Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). "A federal court is presumed to  
11 lack jurisdiction in a particular case unless the contrary affirmatively appears."  
12 *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221,  
13 1225 (9th Cir. 1989). Although the defendant is the moving party in a Rule  
14 12(b)(1) motion to dismiss, the plaintiff is the party invoking the court's  
15 jurisdiction and therefore bears the burden of proving that the case is properly  
16 in federal court. *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001)  
17 (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189, (1936)).

18 Dismissal for lack of subject-matter jurisdiction because of the inadequacy  
19 of the federal claim is proper only when the claim is "so insubstantial,  
20 implausible, foreclosed by prior decisions of this Court, or otherwise completely  
21 devoid of merit as not to involve a federal controversy." *Steel Co. v. Citizens for a*  
22 *Better Env't*, 523 U.S. 83, 89 (1998) (internal citations omitted). When the  
23 question of jurisdiction and the merits of an action are "intertwined" such that  
24 "the question of jurisdiction is dependent on the resolution of factual issues going  
25 to the merits of an action[,]" dismissal for lack of subject matter jurisdiction is

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26  
27 <sup>2</sup> Defendant attached a Declaration from Marios Stolidakis (ECF No. 7-1) in support of its Rule  
28 12(b)(1) motion to dismiss. As Defendant points out, a district court may hear evidence regarding  
jurisdiction without converting a Rule 12(b)(1) motion into a motion for summary judgment.  
*Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009).

1 improper. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

2 Plaintiff claims that Defendant violated the Stored Communications Act,  
3 18 U.S.C. § 2701 *et seq.*, when Defendant changed the settings on Plaintiff's  
4 Pinnacle email account to deny Plaintiff access to the email account. A person  
5 violates the Stored Communications Act if they "intentionally access[] without  
6 authorization" or "intentionally exceed[] an authorization to access" a facility  
7 through which an electronic communication service is provided. 18 U.S.C. §  
8 2701(a)(1)-(2). Section 2707 grants a civil cause of action to enforce violations of  
9 the Act. 18 U.S.C. § 2707.

10 Defendant's jurisdictional argument boils down to a factual dispute about  
11 whether its actions fall within one of the exceptions to liability under § 2701(c),  
12 which provides, "this section does not apply with respect to conduct authorized  
13 ... by the person or entity providing a wire or electronic communications  
14 service[.]" 18 U.S.C. § 2701(c)(1). Defendant argues that because the email  
15 accounts he allegedly accessed and blocked were company email accounts, his  
16 access was authorized and falls within the § 2701(c)(1) exception for conduct  
17 authorized by the person or entity providing a wire or electronic communications  
18 service. (ECF No. 7 at 6:14-7:12.) Whether Defendant's conduct falls within a  
19 liability exception is not a jurisdictional argument, but instead one intertwined  
20 with the merits of the claim. Defendant has not cited a single case suggesting  
21 that this Court lacks jurisdiction and his citation to *Fraser v. Nationwide Mutual*  
22 *Ins. Co.*, 352 F.3d 107 (3d Cir. 2004) (holding that the company, a large insurance  
23 company that provided the email service, was authorized to access the plaintiff's  
24 work email), underscores the fact that federal courts have jurisdiction to interpret  
25 the scope of the SCA and its exceptions. Federal courts have held that the emails  
26 are "wire or electronic communications" under the Act and that emails held on  
27 the servers of email providers are in "electronic storage." *See, e.g., Theofel v.*  
28 *Farey-Jones*, 359 F.3d 1066, 1077 (9th Cir. 2004) (holding that emails stored on

the servers of the internet service provider which provided email services to the plaintiff company were in “electronic storage” both before and after delivery); *Hately v. Watts*, 917 F.3d 770, 787 (4th Cir. 2019) (“[P]reviously delivered and opened emails stored on a web-based email client are in ‘electronic storage[.]’”). Defendant has failed to show that Plaintiff’s claim is so “implausible, foreclosed by prior decisions, ... or otherwise completely devoid of merit as to not involve a federal controversy.” *Steel Co.*, 523 U.S. at 89. Accordingly, Defendant’s motion to dismiss for lack of subject matter jurisdiction is denied.

### III. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than “labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The Court will consider each claim in turn.<sup>3</sup>

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<sup>3</sup> The parties raise several procedural issues regarding exhibits. Plaintiff attached three exhibits to Plaintiff’s response to Defendant’s motion: a copy of the private patrolman’s license from the Private Investigators Licensing Board (ECF No. 10-1), a copy of Pinnacle’s filings for a business license with the Secretary of State (ECF No. 10-2), and an image of a check bearing Plaintiff’s signature (ECF No. 10-3). These exhibits may be properly considered under Fed. R. Civ. P. 10(c) without converting the Rule 12(b)(6) motion into a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). However, the remaining declarations and exhibits in the pleadings, namely Defendant’s second declaration (ECF No. 15-1), Plaintiff’s declaration (ECF No. 16-1), Plaintiff’s FOIA (ECF No. 16-2), and Plaintiff’s copy of the Private Investigators Licensing Board meeting transcript (ECF No. 32-1) may be properly considered in evaluating the motion for a preliminary injunction, but not in the 12(b)(6) motion to dismiss, without converting the motion into a motion for summary judgment. *Id.* In evaluating the 12(b)(6) motion to dismiss.

1                   **1.     NRS 205.477**

2           NRS 205.477 is similar to the federal Stored Communications Act, 18  
3 U.S.C. § 2701, discussed above, and also enforceable by civil action, NRS  
4 205.511. Like the Stored Communications Act, NRS 205.477 makes it a crime for  
5 a person to “knowingly, willfully, maliciously and without authorization interfere[]  
6 with, den[y] or cause[] the denial of access to or use of a computer, system or  
7 network to a person who has the duty and right to use it.” NRS 205.477. The  
8 statute provides an affirmative defense for a defendant who “reasonably believed”  
9 that they were “authorized to use or access” the computer, system, network,  
10 device, or service at issue and that the defendant’s use or access was within the  
11 “scope of that authorization” or consent granted by the owner or user.

12           Defendant’s argument regarding NRS 205.477 is fundamentally the same  
13 as his argument regarding the Stored Communications Act: Defendant argues  
14 that he cannot be liable for interfering with Plaintiff’s access to Plaintiff’s Pinnacle  
15 email account because Defendant was authorized to access the Pinnacle email  
16 accounts. Here, however, Defendant’s argument is presented under Rule 12(b)(6),  
17 not 12(b)(1).<sup>4</sup>

18           Assuming all of the facts in Plaintiff’s Complaint as true, Defendant  
19 exceeded the scope of Defendant’s authority to access Plaintiff’s Pinnacle email  
20 account and to deny Plaintiff access to the same, and thus Plaintiff properly  
21 states a claim under NRS 205.477. The parties do not dispute that Plaintiff and  
22 Defendant were coequal partners in Pinnacle when it was first formed. Under the

23           the Court will not consider those documents or the exhibits that were submitted for the hearing  
24 on the preliminary injunction (ECF No.’s 36-42.) Finally, the Court will construe Plaintiff’s motion  
25 to amend Plaintiff’s opposition (ECF No. 32) as a request to supplement. The Court agrees with  
26 Plaintiff that supplementation is warranted given that the Transcript of Proceedings from the  
Private Investigators Licensing Board’s March 8, 2022 meeting is relevant to this case and  
occurred after Plaintiff’s first opposition was filed. *See* L.R. 7-2(g). As explained above, this  
transcript will be considered with respect to the motion for preliminary injunction only.

27           <sup>4</sup> It does not appear that Defendant has moved to dismiss Plaintiff’s Stored Communications Act  
28 claim under Rule 12(b)(6) for failure to state a claim. (ECF No. 7.) The Court notes, however, that  
Plaintiff’s Stored Communications Act claim would likely survive a 12(b)(6) challenge for the  
reasons set forth in this section.



1 Nevada Limited Liability Company statutes, without a majority of the LLC  
2 members by equity interest consenting to Defendant's actions, Pinnacle would  
3 not have authorized Defendant's actions. See NRS 86.291 ("Except as otherwise  
4 provided ... in the articles of organization or operating agreement, management  
5 of a limited-liability company is vested in its members proportionally in interest  
6 thereof."). Defendant thus cannot have taken unilateral action without Plaintiff's  
7 consent and claim to have been authorized by Pinnacle. Even assuming,  
8 arguendo, that Defendant may have been authorized by Pinnacle to access  
9 Plaintiff's Pinnacle email accounts, Defendant allegedly exceeded the scope of  
10 that the authorization when he changed the settings on Plaintiff's Pinnacle email  
11 accounts to deny access to Plaintiff. See *Theofel v. Farey-Jones*, 359 F.3d 1066,  
12 1073 (9th Cir. 2004) (holding that common law notions of scope of consent govern  
13 the authorization inquiry under the Stored Communications Act).

14 The case cited by Defendant, *Brodsky v. Apple Inc.*, 445 F. Supp. 3d 110,  
15 132 (N.D. Cal. 2020) is distinguishable because it did not involve a dispute  
16 regarding unauthorized email access. In *Brodsky*, the plaintiffs had given Apple  
17 authorization to access their Apple ID login information but claimed violations of  
18 both the federal Computer Fraud and Abuse Act and California's Cal. Penal Code  
19 § 502 when Apple initiated two-factor authentication on their devices after a  
20 software update. The District Court dismissed both claims because the plaintiffs  
21 did not rebut the assertion that Apple was authorized to install the software  
22 updates and generally to access their Apple ID login information. *Id.* at 129-32.  
23 Here, Plaintiff disputes Defendant's authority to access his Pinnacle email  
24 account and change the password to deny him access. See *id.* at 129 ("In  
25 situations where a plaintiff clearly revokes access to a party and not simply the  
26 means, manner, or method for such access, that party may be liable under the  
27 CFAA."). Defendant's motion to dismiss Plaintiff's civil action for violation of NRS  
28 205.477 is denied.



## 2. CONVERSION

Plaintiff's conversion claim asserts that Defendant is liable for exerting wrongful dominion over Plaintiff's membership interest in Pinnacle. (Complaint ¶¶ 22-23.) Conversion is "a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights." *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413, 414 (1958). "[C]onversion is an act of general intent, which does not require wrongful intent and is not excused by care, good faith, or lack of knowledge. Whether a conversion has occurred is generally a question of fact for the jury." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043, 1048 (2000). Though courts have been reluctant to recognize a claim for conversion of intangible property, *see, e.g., Custom Teleconnect, Inc. v. Int'l Tele-Servs., Inc.*, 254 F. Supp. 2d 1173, 1182 (D. Nev. 2003) ("Plaintiff has not pointed to any Nevada case that allows for a conversion claim based on the misappropriation of confidential information."), a claim for conversion may lie for intangible property interests which are reflected in something tangible that can be physically taken. *See Thrifty-Tel, Inc. v. Bezenek*, 46 Cal. App. 4th 1559, 1565, 54 Cal. Rptr. 2d 468, 472 (1996). ("[T]he value of a stock certificate is not the cost of the paper, but the intangible interest it represents. When the certificate is stolen *or placed in another's name* without the owner's permission, the value of the loss is not the cost of the paper—a tangible—but the worth of the stock—an intangible.") (emphasis added).

Plaintiff alleges that he had a 50% interest<sup>5</sup> in Pinnacle when it was formed and appeared on Pinnacle's original business filings with the Secretary of State as a member of the LLC before Defendant filed an amended list of officers with

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<sup>5</sup> Defendant points out that Plaintiff's Complaint alternates between describing Plaintiff's membership interest as a 50% interest and as a 51% interest. The Court notes that for the purposes of the claims involved in this case, the fact that Plaintiff has pled an ownership interest of at least 50% is sufficient. The parties do not dispute that Plaintiff was a coequal member of Pinnacle when it was first formed.

1 the Secretary of State in August 2021 which did not include Plaintiff. Like  
2 changing the name on a stock certificate, this act is an act of physical dominion  
3 over an intangible property interest and can thus give rise to a claim for  
4 conversion. Defendant's overall course of action has been to deny Plaintiff access  
5 to the company. This claim has been pled with particularity. Defendant's motion  
6 to dismiss Plaintiff's claim for conversion is therefore denied.

### 7 **3. DECLARATORY AND INJUNCTIVE RELIEF**

8 Plaintiff claims that "[p]ursuant to NRS 30.040, Plaintiff is entitled to a  
9 declaration of his statutory and contractual rights to his fifty-one percent  
10 membership interest in Pinnacle." (Complaint ¶ 27.) Defendant argues that  
11 declaratory judgments are only a form of relief, not a remedy. Under the Uniform  
12 Declaratory Judgments Act as adopted in Nevada, a person "interested under a  
13 ... contract, or whose rights, status or other legal relations are affected by a  
14 statute ... may have determined any question of construction or validity arising  
15 under the ... statute [or] contract[.]" NRS 30.040(1). The conditions which must  
16 exist for declaratory relief to be granted are: (1) a justiciable controversy; (2)  
17 between persons whose interests are adverse; (3) by a person with a legally  
18 protectable interest in the controversy; and (4) the issue is ripe for judicial  
19 determination. *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 86, 367 P.3d  
20 1286, 1291 (2016) (citing *Kress v. Corey*, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948)).  
21 Because an independent cause of action is not required to seek a declaratory  
22 judgment under NRS 30.040, a declaratory judgment is properly considered a  
23 cause of action, not just a form of relief and here Plaintiff meets the four  
24 requirements for a claim for declaratory relief under NRS 30.040. Therefore,  
25 Defendant's motion to dismiss Plaintiff's claim for a declaratory judgment under  
26 NRS 30.040 is denied.

27 Defendant correctly argues that injunctive relief is a remedy, not a claim  
28 as there is no equivalent to NRS 30.040 for injunctive relief. Without prejudice to

1 Plaintiff's claim for injunctive relief as a remedy, Defendant's motion to dismiss  
2 Plaintiff's claim for injunctive relief is granted.

#### 3 **4. FRAUD**

4 Plaintiff's claim for fraud stems from Plaintiff's assertion that "Defendant  
5 falsely represented to Plaintiff that he agreed that ownership interest in Pinnacle  
6 would be split equally between them, i.e., a '50/50' split ownership interest, when  
7 in fact, at all times relevant herein, Defendant intended to slowly take over  
8 Pinnacle's operations and cut Plaintiff out of the company completely[.]"  
9 (Complaint ¶ 29.) A claim for fraudulent misrepresentation in Nevada requires:  
10 (1) a false representation made by the defendant; (2) defendant's knowledge or  
11 belief that its representation was false or that defendant has an insufficient basis  
12 of information for making the representation; (3) defendant intended to induce  
13 plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage  
14 to the plaintiff as a result of relying on the misrepresentation. *Barmettler v. Reno*  
15 *Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998). Under Fed. R. Civ. P.  
16 9(b), a party must state with particularity the circumstances constituting fraud.

17 Plaintiff has not met the burden of pleading fraud with particularity under  
18 Rule 9. Plaintiff did not include any details regarding specific conversations or  
19 communications in which a false statement was knowingly made to Plaintiff by  
20 Defendant. It is not clear that there ever was a false statement, for it is possible  
21 that Defendant intended to share ownership of Pinnacle equally during the initial  
22 stages, but then had other ideas. The parties do not dispute that Plaintiff was a  
23 coequal member of Pinnacle when Pinnacle was first formed. (ECF No. 10-2.)  
24 Defendant's motion to dismiss Plaintiff's claim for fraudulent misrepresentation  
25 is granted with leave to amend.

#### 26 **5. DEFAMATION PER SE**

27 Plaintiff claims that Defendant knowingly made false and defamatory  
28 statements about Plaintiff to third parties, namely that Plaintiff was stealing from

1 Pinnacle and that Plaintiff had been diagnosed with early onset dementia.  
2 (Complaint ¶ 34.) An action for defamation in Nevada requires: (1) a false and  
3 defamatory statement; (2) an unprivileged publication to a third person; (3) fault,  
4 amounting to at least negligence; and (4) actual or presumed damages. *Clark*  
5 *Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496,  
6 503 (2009). If the defamatory communication imputes a person's lack of fitness  
7 for trade, business, or profession, or tends to injure the plaintiff in his or her  
8 business, it is deemed defamation per se and damages are presumed. *Id.*

9 Plaintiff has provided enough information to survive a motion to dismiss by  
10 alleging the contents of the allegedly defamatory statements and to whom they  
11 were made. Plaintiff's Complaint states that "[i]n support of his efforts to  
12 undermine any of [Plaintiff's] control over and/or involvement in Pinnacle's  
13 business operations, [Defendant] defamed [Plaintiff] in front of employees and  
14 clients[.] Notably, [Defendant] falsely claimed that Pinnacle was unable to make  
15 payroll because [Plaintiff] was stealing from the business, and that [Plaintiff] was  
16 diagnosed with and suffering from early onset dementia." (Complaint ¶¶ 14-15.)  
17 These allegations put Defendant on notice of the contents of the statement and  
18 the persons to whom they were made, and the approximate date of the statements  
19 can be inferred from the context of the Complaint.

20 Defendant also argues that "[o]pinions are protected." (ECF No. 7 at 10:16.)  
21 Generally, only assertions of fact, not opinion, can be defamatory. *Wynn v. Smith*,  
22 117 Nev. 6, 16 P.3d 424, 431 (2001). But expressions of opinion may suggest that  
23 the speaker knows certain facts to be true or may imply that facts exist that will  
24 be sufficient to render the message defamatory if false. *Id.* The determination of  
25 whether a statement is capable of a defamatory construction is a question of law.  
26 *Branda v. Sanford*, 97 Nev. 643, 637 P.2d 1223, 1225-26 (1981).

27 While it is not clear which statements Defendant claims are opinions, the  
28 Court finds that the statements that Plaintiff was stealing from the business and

1 suffering from early onset dementia are assertions of fact that may be defamatory.  
2 Whether or not Plaintiff took a certain action (stealing from the company) or was  
3 diagnosed with a certain medical condition (early onset dementia) are falsifiable  
4 factual claims. Notably, Defendant does not argue that the statements are true.  
5 Defendant's motion to dismiss Plaintiff's claim for defamation per se is denied.

6 **6. INTENTIONAL INTERFERENCE WITH PROSPECTIVE**  
7 **ECONOMIC ADVANTAGE**

8 Plaintiff claims that Defendant interfered with his "prospective economic  
9 advantage with prospective customers in the private security and patrol  
10 business," which Defendant "intentionally harmed" by "falsely stating to  
11 customers of Pinnacle that Plaintiff was stealing from Pinnacle, and that Plaintiff  
12 was suffering from early onset dementia." (Complaint ¶¶ 39-40.) In order to  
13 establish a claim for interference with prospective economic advantage in Nevada,  
14 a plaintiff must establish the following elements: (1) a prospective contractual  
15 relationship between the plaintiff and a third party; (2) the defendant's knowledge  
16 of this prospective relationship; (3) the intent to harm the plaintiff by preventing  
17 this relationship; (4) the absence of privilege or justification by the defendant;  
18 and (5) actual harm to the plaintiff as a result. *See Leavitt v. Leisure Sports Inc.*,  
19 103 Nev. 81, 734 P.2d 1221, 1225 (1987).

20 Plaintiff has not identified a specific customer of Pinnacle who  
21 contemplated entering into a business relationship with Plaintiff. Defendant's  
22 motion to dismiss Plaintiff's claim for intentional interference with prospective  
23 economic advantage is granted with leave to amend.

24 **7. UNJUST ENRICHMENT**

25 Plaintiff alleges that "Defendant received a benefit from Plaintiff by  
26 transferring nearly all of Pinnacle's profits to separate accounts, to Plaintiff's  
27 detriment as fifty-one percent owner of Pinnacle." (Complaint ¶ 57.) Plaintiff also  
28 incorporates the other allegations of the Complaint into the unjust enrichment

1 section. (*Id.* ¶ 56.) Unjust enrichment exists when the plaintiff confers a benefit  
 2 on the defendant, the defendant appreciates such benefit, and there is  
 3 acceptance and retention by the defendant of such benefit such that it would be  
 4 inequitable for him to retain the benefit without payment of the value thereof.  
 5 *Korte Constr. Co. v. State on Rel. of Bd. of Regents of Nevada Sys. of Higher Educ.*,  
 6 137 Nev. Adv. Op. 37, 492 P.3d 540, 543 (2021). Benefit means any form of  
 7 advantage, including but not limited to retention of money or property. *Id.*

8 It may be true, as Defendant asserts, that the funds that were transferred  
 9 between bank accounts were Pinnacle’s funds, which would make those transfers  
 10 an injury to Pinnacle, not Plaintiff, for which Plaintiff could only seek redress  
 11 through a derivative action. Plaintiff’s claim is that Defendant has unjustly  
 12 retained Plaintiff’s interest in Pinnacle and unjustly benefitted as a result.  
 13 Plaintiff conferred a benefit upon Defendant by founding Pinnacle with Defendant  
 14 and obtaining Pinnacle’s requisite licensure. Assuming all the facts in the  
 15 Complaint as true, it would be unjust for Defendant to retain Plaintiff’s 50%  
 16 membership interest in Pinnacle, which may entitle the holder of the interest to  
 17 certain distributions from Pinnacle, without paying for it. Defendant’s motion to  
 18 dismiss Plaintiff’s claim for unjust enrichment is denied.

#### 19 **IV. MOTION FOR PRELIMINARY INJUNCTION**

20 Plaintiff seeks a preliminary injunction to enjoin Defendant from: (1)  
 21 personally possessing or otherwise diverting funds belonging to Pinnacle to  
 22 outside accounts; (2) making false and defamatory statements about Plaintiff to  
 23 third parties; (3) logging into and otherwise accessing Plaintiff’s email account(s);  
 24 and (4) forging Plaintiff’s signature in any manner. (ECF No. 13.) A preliminary  
 25 injunction is an “extraordinary” remedy that is “never awarded as of right.” *Winter*  
 26 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The Supreme Court clarified  
 27 in *Winter* that to obtain an injunction, the plaintiff must establish: (1) likelihood  
 28 of success on the merits; (2) likelihood of suffering irreparable injury in the

1 absence of preliminary relief; (3) the balance of equities tips in the plaintiff's favor;  
2 and (4) that an injunction is in the public interest. *Id.* at 20. On the irreparable  
3 injury element, a plaintiff seeking preliminary injunctive relief must "demonstrate  
4 that irreparable injury is *likely* in the absence of an injunction[.]" not merely  
5 possible. *Id.* at 22.

6 At a videoconference hearing on June 23, 2022, the Court heard testimony  
7 from Plaintiff Tony Coffee, Defendant Marios Stolidakis, and Leor Rozen, who  
8 became involved with Pinnacle after Plaintiff's departure. Having considered this  
9 evidence, noting the parties' objections, the Court finds that Plaintiff has not met  
10 his burden of showing that irreparable injury is likely (as opposed to merely  
11 possible) to occur in the future absent an injunction and denies the motion for  
12 that reason.

13 Plaintiff testified that he and Defendant formed Pinnacle in the summer of  
14 2020 and that Plaintiff stated from the beginning that he would not be able to  
15 put a lot of money into the company. Plaintiff testified that their relationship  
16 soured in the summer of 2021. At that time, Defendant issued Plaintiff a series  
17 of "Capital Calls" and "Dilution Notices" which stated that if Plaintiff did not  
18 contribute capital to Pinnacle, Plaintiff's equity interest would be diluted. In the  
19 last of these notices, Plaintiff's equity interest was diluted to zero. Plaintiff  
20 maintains that these dilutions were not lawful and that he continues to hold a  
21 50% equity interest in Pinnacle.

22 Regarding Defendant's alleged transfers of funds from Pinnacle to outside  
23 bank accounts, it appears that this practice may have occurred but has since  
24 ceased and is unlikely to resume. Plaintiff testified that in the spring and summer  
25 of 2021, he found Defendant's transfers of Pinnacle funds to Defendant's  
26 personal bank accounts "sketchy." Defendant testified that these transfers were  
27 made as reimbursements for company expenses such as the rent for the office,  
28 which Defendant put on his personal credit card for convenience, and Defendant



1 has bank records to confirm this. Defendant and Leor Rozen testified that since  
2 Plaintiff's departure, Leor Rozen took on the role of Chief Financial Officer of  
3 Pinnacle, wherein he ensures that all of Pinnacle's financial activities are properly  
4 approved and documented. The Court's main concern regarding the bank  
5 accounts would be for potential looting of the company by the Defendant which  
6 would make later relief on the merits difficult to administer. The Court finds this  
7 unlikely given Defendant's explanation for his prior actions and given the  
8 financial controls and procedures that have been implemented.

9 While Defendant denies making any defamatory statements, even if he did,  
10 as alleged, there does not appear to be an ongoing threat of him doing it again.  
11 Plaintiff testified that Defendant made defamatory statements about him to other  
12 employees in the Pinnacle office in the summer of 2021. He described that after  
13 departing from Pinnacle, he had difficulty obtaining clients, employees, and  
14 insurance for his new security company because the defamatory statements had  
15 been spread through the private security industry in Las Vegas, which is a small  
16 community. Defendant denied making the defamatory statements whatsoever.  
17 Although Plaintiff proffered two affidavits from individuals who claimed to have  
18 heard Defendant make defamatory statements about Plaintiff in August of 2021,  
19 Plaintiff did not identify specific incidents after the summer of 2021 where  
20 Defendant had made further defamatory statements. The Court finds that  
21 Plaintiff has not met his burden to show a likelihood that Defendant will continue  
22 to make defamatory statements regarding Plaintiff. Plaintiff testified that  
23 Defendant's defamatory statements have continued to harm him in his business  
24 and personal life. Although other individuals may be repeating the defamatory  
25 statements, Plaintiff has not shown that Defendant continues to make the  
26 statements.

27 Defendant's allegedly unauthorized access to Plaintiff's Pinnacle email  
28 account in August 2021 also appears unlikely to repeat due to changed

1 circumstances. Plaintiff testified that in August of 2021, he found himself unable  
2 to access the email account “TC@pinnacleprotectiongroup.com,” and that he  
3 called GoDaddy, which hosts the email, and found out that the password had  
4 been changed. Defendant testified that this email account had been archived and  
5 has therefore sat dormant since August 2021. Plaintiff admitted that he has no  
6 evidence to suggest that Defendant improperly used the email to impersonate  
7 Plaintiff, disseminate confidential information, or engage in any other  
8 unauthorized use since that time.

9 Finally, Defendant’s allegedly unauthorized use of Plaintiff’s electronic  
10 signature in 2021, which appears to have been limited to a loan application and  
11 one round of payroll checks, appears unlikely to recur given the current  
12 circumstances. Plaintiff stated that his signature appeared on Pinnacle payroll  
13 checks without his authorization. Defendant testified that he did not know  
14 Plaintiff’s signature was still appearing on the checks after Plaintiff’s departure  
15 since the checks are handled by an outside payroll company. Defendant stated  
16 that Pinnacle has changed to a different payroll company and that Plaintiff’s  
17 signature will no longer appear on any checks. The Court finds Defendant’s  
18 explanation for the payroll check signatures persuasive. Regarding the use of  
19 Plaintiff’s signature to apply for a small business loan, Plaintiff and Defendant  
20 testified that they were initially in conversation about obtaining a small business  
21 loan for Pinnacle, but that Plaintiff ultimately did not consent to the use of his  
22 information. The Court finds that there is little to suggest that there is a likelihood  
23 of this occurring again, especially given Plaintiff’s lack of involvement with the  
24 company for nearly ten months.

25 In sum, even assuming that the unlawful acts alleged in the Complaint and  
26 supported by evidence at the hearing may have occurred in the summer of 2021,  
27 those facts are not sufficient to show that they are likely to occur in the future,  
28 as opposed to merely possible. The Court finds that Defendant has not met his

1 burden of showing that irreparable harm is likely to occur in the absence of a  
2 preliminary injunction. Given that Plaintiff has not met this necessary element,  
3 the Court does not reach the likelihood of success on the merits, the balance of  
4 equities, or public interest.

5 **V. CONCLUSION**

6 It is hereby ordered that Defendant's motion to dismiss for lack of subject  
7 matter jurisdiction is DENIED.

8 It is hereby ordered that Defendant's motion to dismiss for failure to state  
9 a claim is GRANTED IN PART AND DENIED IN PART.

10 It is hereby ordered that Plaintiff's motion for a preliminary injunction is  
11 DENIED.

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13 DATED THIS 6<sup>th</sup> day of July 2022.

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15  
16 ANNE R. TRAUM  
17 UNITED STATES DISTRICT JUDGE  
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